

RELATIONAL FUNDING CORPORATION,)
)
 Plaintiff,)
)
 v.) Civ. No. 01-821-SLR
)
TCIM SERVICES, INC.,)
)
 Defendant.)

At Wilmington this 3rd day of May, 2004, having reviewed plaintiff's motions to amend the judgment (D.I. 101) and award attorneys fees (D.I. 102), and the memoranda submitted thereto;

1. On December 11, 2001, plaintiff Relational Funding Corporation filed this action against defendant TCIM Services, Inc., seeking damages arising under a finance lease agreement for computer equipment. (D.I. 1) Plaintiff sought relief in the form of past due monthly rent and damages arising from missing and damaged equipment. (Id.) On September 15, 2003, the court conducted a single day bench trial on plaintiff's claims for

breach of contract.

2. After considering the evidence and testimony, the court made its findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a) on February 24, 2004. (D.I. 98; D.I. 99) The court found that both parties failed to perform obligations under the lease agreement, but awarded damages to plaintiff in the amount of \$119,880.88 plus accrued interest in the amount of \$63,454.76. (D.I. 98 at ¶¶ 32-38) The award was based on the court's finding that plaintiff was entitled to damages for missing or damaged equipment but that plaintiff was not entitled to monthly rent. (Id.)

3. **Motion to Amend the Judgment.** Plaintiff seeks to amend the February 24, 2004 judgment pursuant to Fed. R. Civ. P. 59(e) alleging that the court's denial of rent for the period from October 2001 through April 2002 was a clear error of law. (D.I. 101) Plaintiff contends that the court's findings of fact are inconsistent with its conclusion that plaintiff is not entitled to damages for rent during the period of October 2001 and April 2002.

4. The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Café ex-rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Accordingly, a court may alter or amend its judgment if the movant demonstrates

at least one of the following: (1) a change in the controlling law; (2) availability of new evidence not available when summary judgment was granted; or (3) a need to correct a clear error of law or fact or to prevent manifest injustice. See id.

5. Plaintiff offers argument but not authority to support its contention that the court's decision is a clear error of law. Consequently, plaintiff's motion to amend the judgment will be denied.

6. **Attorneys' Fees.** Plaintiff seeks total attorneys' fees in the amount of \$183,004.88 and costs in the amount of \$13,496.72. (D.I. 102) "Unlike the British system, in American courts the general rule is that attorneys' fees are not recoverable. However, it is well-recognized that counsel fees may be awarded whenever the parties have entered into an enforceable agreement providing for same." Merola v. Atlantic Richfield Co., 493 F.2d 292, 297 (3d Cir. 1974). Michigan law permits the awarding of attorneys' fees in certain limited circumstances, including where provided for by private agreement. See Zeeland Farm Services, Inc. V. JBL Enterprises, Inc., 555 N.W.2d 733 (Mich. App. 1996). Recovery of attorneys' fees is limited to reasonable attorneys' fees and the party seeking to recover must present evidence thereto. Zeeland, 555 N.W.2d at 736.

7. In the present case, section 16(b) of the lease agreement provides that, in the event of default, defendant is

obligated to pay "attorney and court costs incurred by Lessor relating to the enforcement of its rights under the Lease."

(D.I. 104, ex. A) Therefore, the court finds that language of the lease agreement unambiguously provides for plaintiff to recover attorney fees.¹

8. Having concluded that plaintiff is entitled to attorneys' fees, the court nevertheless concludes that the amount plaintiff demands is plainly unreasonable. Under Michigan law, the reasonableness of the attorneys' fees are evaluated according to the following nonexclusive criteria: "(1) the professional standing and experience of the attorney, (2) the skill, time and labor involved, (3) the amount in question and the results achieved, (4) the difficulty of the case, (5) the expenses incurred, and (6) the nature and length of the professional relationship with the client." Campbell v. Sullins, 667 N.W.2d

¹Defendant's assertion that there was not a default in the present case is contrary to the findings of fact in the present case. Although the court found that defendant was not obligated to pay monthly rent, plaintiff nonetheless was still properly within its contractual rights to collect damages related to the condition of the returned equipment.

Defendant also contends that Michigan law requires that attorney fees be proven at trial. (D.I. 104 at 4-5) Michigan law, however, directs only that in some cases an evidentiary hearing may be necessary to establish the reasonableness of the attorneys fees. See Zeeland, 555 N.W.2d at 736. See also Matter of Howarth's Estate, 310 N.W.2d 255, 257 (Mich. App. 1981) ("While in a proper case a trial court may resolve an issue like this through judicial notice of adjudicative facts pursuant to MRE 201, the trial court here did not purport to do so."). In the present case, defendant has not sought an evidentiary hearing and the court does not find that this case requires it. See id.

887, 900 (Mich. App. 2003). However, a reasonable fee is not necessarily the fee that is actually charged. See Cleary v. Turning Point, 512 N.W.2d 9 (Mich. App. 1993). Where a party prevails only on a portion of its claim, attorneys' fees may be awarded proportionately thereto. See Schellenberg v. Rochester Michigan Lodge No. 2225, 577 N.W.2d 163, 174 (Mich. App. 1998). Fees and costs incurred post trial may also be awarded. See Joerger v. Gordon Food Service, Inc., 568 N.W.2d 365 (Mich. App. 1997). Even where a contract provides for the awarding of attorneys' fees, a court may nonetheless exercise its discretion and decline to award fees. See Mitchell v. Dahlberg, 547 N.W.2d 74, 80 (Mich. App. 1996).

9. Here plaintiff seeks \$196,501.60 in fees and costs, although prevailing on only a portion of its claims and receiving only \$119,880.88 in actual damages, exclusive of interest. Plaintiff seeks \$160,852.00 for fees incurred by Askounis & Borst, P.C., \$22,152.88 for fees and costs incurred by Seitz, Van Ogtrop & Green, P.A., and an additional \$13,496.72 in costs incurred. (D.I. 102)

10. The present case did not present any novel or difficult legal issues. In all respects, this was a simple contract dispute. The present case did not require substantial discovery or expert testimony. Nevertheless, plaintiff's attorneys managed to spend a substantial amount of time on the case. According to

the billing statements, Askounis & Borst billed a total of 711.6 hours, with hourly rates ranging from \$100 for a paralegal to \$250 for Mr. Borst's time. (Id., ex. A) Plaintiff's local counsel billed a total of 94.9 hours with hourly rates ranging from \$150 to \$225. (Id., ex. B) In summary, 806.5 hours were expended by plaintiff's counsel in pursuit of plaintiff's claims against defendant. The court finds that the amount of time spent and billed in the present case are unreasonable in light of the claims and issues involved.

11. The court weighs heavily the factor that plaintiff prevailed only on a portion of its claims. In its complaint, plaintiff sought \$383,139.18 in damages plus \$20,205.80, exclusive of interest, for each month after August 2001 during which defendant retained possession of the leased equipment. (D.I. 1 at ¶ 16) In plaintiff's proposed findings of fact and conclusions of law, if it had prevailed in full it would have been entitled to \$697,417.74 exclusive of interest. (D.I. 92 at ¶¶ 32-34) Ultimately, plaintiff was awarded only \$119,880.88, or approximately seventeen percent its claimed damages. (D.I. 98; D.I. 99) Accordingly, awarding plaintiff \$196,880.99 in fees and costs would not be consistent with Michigan precedent that such awards be proportionate with the results achieved. See Schellenberg, 577 N.W.2d at 174.

12. Defendant, although arguing that plaintiff's fees are

unreasonable, fails to provide any factual support as to unreasonableness of the billing rates or unreasonableness of time spent on the matter. (D.I. 104 at 16-21) Instead, defendant relies solely on arguments pertaining to the size of damages asserted at trial in relation to damages actually awarded to support the conclusion that no cost-shifting is warranted. Similar to the merits portion of this case, the court has been presented with two equally unreasonable choices.

13. The court, mindful of its discretion under Michigan law to award reasonable attorneys' fees, finds that plaintiff is entitled to attorneys' fees and costs in the amount of \$76,620.72. This figure reflects the difference between the costs associated with the litigation and the judgment, exclusive of interest. This figure also represents thirty-nine percent (39%) of the total fees and costs incurred at trial, consistent with plaintiff's success on only a portion of its claims.

Sue L. Robinson
United States District Court